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April 6, 1996

William F. Caton
Federal Communications Commission
1919 M Street NW
Washington DC 20554

RECEIVED

MAY 7 1996

FCC MAIL ROOM

Re: CC Docket No. 95-155

DOCKET FILE COPY ORIGINAL

Dear Sir:

Enclosed you will find a response in opposition to the Petition for Reconsideration filed on behalf of Genesis Two, Inc., and Stop 888 Coalition in the above case. Scherers Communications Group, Inc., wishes to express strong opposition to the above mentioned Petition. We have enclosed an original and 11 copies of our response.

Please feel free to contact me at the telephone number listed above if you have any questions.

Sincerely,

Susan Drombetta

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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MAY 7 1996

FCC MAIL ROOM

In the Matter of

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Toll Free Service Access Codes

)

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CC Docket No. 95-155

**RESPONSE TO PETITION FILED BY
GENESIS TWO, INC. AND STOP 888 COALITION**

**Susan Drombetta
Manager - Rates and Tariffs
Scherers Communications Group, Inc.
575 Scherers Court
Worthington OH 43085
(614) 841-2421**

Dated: May 3, 1996

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**Before the
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CC Docket No. 95-155

**RESPONSE TO PETITION FILED BY
GENESIS TWO, INC. AND STOP 888 COALITION**

Scherers Communications Group, Inc. (SCG), hereby submits its Response to the Petition for Reconsideration (Petition) filed April 1, 1996, on behalf of Genesis Two, Inc. and Stop 888 Coalition (Petitioners). Pursuant to Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)), SCG wishes to state its opposition to the proposed relief requested by the petitioner.

1. INTRODUCTION

Scherers Communications Group, Inc., is both a certified Responsible Organization (Resp Org) and interexchange carrier, offering toll free service to clients through the use of 800 and 888 toll free service access codes. This service is offered through the resale of transport services provided by underlying carriers. SCG has also been an active participant in meetings of the SMS\800 Number Administration Committee (SNAC) and has contributed to the SNAC 888 Network Implementation Plan. In addition, SCG worked with Database Service Management, Inc. (DSMI), to implement the SNAC 888 Replication Plan. Therefore, SCG has both factual knowledge of the industry involvement and interest in the outcome due to its position as a large volume consumer of the service involved.

2. FACTUAL BACKGROUND

In 1993, the Service Management System/800 (SMS/800) database was established to handle the management and assignment of portable 800 numbers. At that time, the Industry Guidelines for 800 Number Administration were developed. In these guidelines, 800 Service was defined as “A telecommunications service for which the dialing party incurs no toll charges.”¹ The definition did not specify a difference in applications for the service or customer classification (business or residence). With the exception of certain NXXs for specific applications, the guidelines state that 800 numbers are to be assigned on a first-come, first-served basis.² Consequently, 800 numbers have been utilized for all types of service regardless of the anticipated volume or purpose of the service.

On February 7, 1995, at OBF #49, the SNAC accepted Issues 1100, 1101, and 1102 related to exhaust of 800 numbers.³ Copies of the documentation of these issues have been included as Attachments 1, 2, and 3. The submission of these issues indicates the first involvement of the SNAC in the 800 exhaust situation. The issues were referred to the OBF (Ordering and Billing Forum) and SNAC by the Industry Numbering Committee when it became apparent that, based upon the rate of 800 number usage, the resource would be exhausted prior to the planned implementation of the new toll free number resource, 888. Therefore, the decision to assign a new NPA as well as the actual assignment of the NPA was handled by the Industry Numbering Committee, not the SNAC.

In order to carefully monitor the exhaust situation, the SNAC requested that the Number Administration and Service Center provide weekly reports on the usage of 800 numbers, including assignment, installation, and disconnection. Information for the reports was derived from actual

¹ See Industry Guidelines for 800 Number Administration, Revised June 1, 1994, Page 18

² Id., Page 7

³ See Interim Exhaust Relief measures for 800 numbers, 800 Number Assignment Rate Reports, and 800 Number Administration Guidelines Changes, Issues 1100, 1101, and 1102, Order and Billing Forum, Accepted February 7, 1995.

data provided by the SMS database. These reports indicated that the resource was being depleted at a rate of about 40,000 numbers per week. In May, 1995, this number doubled. On June 13, 1995, the Common Carrier Bureau of the Federal Communications Commission (Commission) began imposing limitations upon the industry in order to extend the supply of 800 numbers.⁴

On October 5, 1995, the Commission issued a Notice of Proposed Rulemaking in the Matter of Toll Free Service Access Codes (Notice). This Notice requested comments on the following topics: Efficient Use of Toll Free Numbers, Mechanics of Opening New Toll Free Codes, Warehousing of Toll Free Numbers, Vanity Numbers, Toll Free Directory Assistance, Administration of the Service Management System, Public Awareness and Industry Participation, and Circuit Breaker Model.⁵ At no time did the Commission solicit comments questioning the necessity for adding a new toll free NPA. The Commission stated that “our goal in initiating this rulemaking proceeding is to assure their efficient used and to avoid the unanticipated rapid depletion experienced with 800 numbers.”⁶ In addition, the Commission granted that some businesses have invested substantial resources in their assigned numbers and had begun to think of these numbers as their own.⁷ However, the FCC also stated “Like the Commission, Bellcore has characterized numbers as a public resource for use by individuals or entities, specifically denying that administrative assignment of a number implies ownership by either the assignor or assignee.”⁸

The SNAC also addressed the concern about the resources invested in vanity numbers. OBF Issue 1155, 8XX (Toll Free) SAC Implementation, was accepted on July 27, 1995. It has been enclosed as Attachment II. The Issue Statement states “Due to the uniqueness of the situation (Y factor and brand protection issues) when coupled with the expected rush to meet

⁴ See Letter from Kathleen M. H. Wallman to Michael Wade, June 13, 1995

⁵ See Toll Free Service Access Codes, Notice of Proposed Rulemaking, CC Docket No. 95-155 (Released October 5, 1995)

⁶ Id. at IV. A. 1. (12)

⁷ Id. at IV. D. 1. (38)

⁸ Id. at IV. D. 1. (37)

customer expectations (get the good numbers), system impacts and customer impacts need to be addressed.”⁹ The result was development of the SNAC Replication Plan (Replication Plan). In addition, a survey was begun among customers to determine the extent of demand for the replication of 800 numbers in the 888 NPA. Although the SNAC was split over the issue of replication, the entire group recognized the need to set aside the numbers temporarily until a decision could be made on their disposition. The initial list of numbers was compiled by Database Service Management, Inc. (DSMI), on December 14, 1995, and ordered into an “unavailable” status by the Commission on January 25, 1996.¹⁰ Numbers were added to the list on February 29, 1996, when the Commission ordered DSMI to reclassify numbers which has been erroneously omitted from the original survey.¹¹

On February 10, 1996, the early reservation period recommended in the SNAC Implementation Plan was implemented with allocations established by the Commission. On February 29, 1996, an Emergency Motion for Stay was filed by Vanity International and Genesis Two, Inc., requesting that a limited number of 888 numbers be placed in the “unavailable” status prior to the implementation of the new NPA on March 1, 1996.¹² This motion was later withdrawn when the Commission ordered DSMI to set aside the numbers listed in the motion. Consequently, the implementation of 888 was completed on March 1, 1996, with the continued allocations established by the Commission.

3. RESPONSE TO PETITION

Scherers Communications Group, Inc., as an active industry participant in the implementation of the 888 NPA, believes that the arguments presented by the Petitioner are flawed and without merit. First of all, the decision to establish a new toll free NPA was not made

⁹ See 8XX (Toll Free) SAC Implementation, Issue 1155, Ordering and Billing Forum, Accepted July 27, 1995

¹⁰ See Toll Free Service Access Codes, Report and Order, CC Docket No. 95-155, DA 96-69 (Adopted January 25, 1996)

¹¹ See Letter from Regina M. Keeney to Michael Wade, February 29, 1996

¹² See Toll Free Service Access Codes, Emergency Motion for Stay, CC Docket No. 95-155. (Filed February 29, 1996)

by the SNAC. As presented earlier, the SNAC was not involved in the situation until it became apparent that 800 numbers would be exhausted prior to the industry implementation date. Secondly, the petitioner alleges misconduct by Resp Orgs in informing 800 number subscribers of their ability to request the set aside of replicate numbers in the 888 NPA.¹³ The allegation that Resp Orgs were involved in misconduct is unfair and unproven, since it is based upon the petitioner experience with three Resp Orgs out of a group of over one hundred. SCG is offended by this accusation based upon no experience or contact with our company.

Resp Orgs have also been accused of “squandering 800 numbers for several years by offering them to non-business customers who may never have requested them.”¹⁴ Non-business customers may take offense to his attitude that their pager numbers or their personal 800 numbers are unnecessary. SCG suggests that the petitioner contact an expectant father waiting to be paged when his wife goes into delivery or the parent of a college student who has installed a residential 800 number for calls from the dorm. The increase in work-at-home opportunities and the reduction in the cost of toll free services have also contributed to the rapid exhaust of current NPAs. In addition, the extent to which these services have been accepted is an indication of their value to consumers. The petitioners decry the fact that carriers use these numbers to generate more calls, but refuses to acknowledge that the calls would not be made if consumers did not find these services useful.¹⁵ Evidently, the petitioners believe that only businesses have the right to the benefits of competition when stating “If the FCC and the telephone industry had been confronted with a run on all 8 million 800 numbers by exclusively commercial enterprises, the detrimental effect of adding an additional toll free SAC perhaps could have been justified by the overriding benefits of greater competition created by new enterprises.”¹⁶

¹³ See Toll Free Service Access Codes, Petition for Reconsideration, CC Docket No. 95-155 (Filed April 1, 1996) Page iii.

¹⁴ Id., Page 5

¹⁵ Id., Page 14

¹⁶ Id., Page 14

The petitioners also indicate that the Commission has been remiss in its statutory responsibility toward the assignment of 800 and 888 numbers. The petition states "...the Bureau merely assumed that certain facts were accurate..."¹⁷ First of all, the decisions made by the Commission have been based upon factual material provided to the Commission by DSMI and the NASC. The reports provided quantitative information about the volume of numbers in use. In addition, the petition states that "The R & O is nothing short of a disaster for existing commercial subscribers to and users of 800 toll free numbers," citing subscriber and public confusion.¹⁸ However, it fails to consider those businesses who are anxious for a new NPA to open with additional vanity numbers. The Petitioners call for a lengthy investigation would imperil these businesses and impede their ability to do business.

Several conflicting arguments were made regarding the Commission's position on the actual replication of current 800 numbers in the new 888 NPA. The petition states, "Implicit in the Commission's statements was the recognition that commercial toll free service was worthy of special protection."¹⁹ The Commission actually stated that "This fact supports the view that an ownership interest in the term associated with a vanity number does not imply the existence of any ownership interest in the underlying number."²⁰ This statement indicates that protection is provided only to the mnemonic term used in place of the number rather than the number itself. Statements by the Commission should not be construed as recognition of the need for special protection but as recognition of the importance placed on telephone numbers by businesses. Another argument raised in the petition is the demand that the Commission reconsider the R & O as it addresses the protection problem. It states, "To do otherwise would be to turn a blind eye towards black letter law in the Communications Act requiring all carriers to treat all customers on an equal footing."²¹ It would be far more equal to provide all 888 numbers to all customers

¹⁷ Id., Page 11

¹⁸ Id., Page 2

¹⁹ Id., Page 4

²⁰ See Toll Free Service Access Codes, at IV., D. 1. (39)

²¹ See Petition, Page 17

without any protection whatsoever. This position is supported in the Industry Guidelines which state, "Toll Free numbers are not to be treated as commodities which can be bought or sold, and no individual or entity is granted a proprietary interest in any Toll Free number assigned."²² Therefore, the "unavailable" numbers should be released for assignment by all carriers.

The Petitioners state that "Implementation of 888 under the R & O has been neither efficient, nor fair, nor orderly."²³ This statement ignores the fact that both the early reservation date and the March 1, 1996, implementation date have passed without the overpowering of the database, without excessive consumer complaints, and with the support and cooperation of all members of the industry. Although the Commission did deal with the problem of many numbers which failed to be set aside by Resp Orgs, these problems were attributed to a small number of Resp Orgs rather than a defective implementation plan. Although SCG still believes that the allocation plan imposed by the Commission places smaller Resp Orgs at a disadvantage, we understand that some limitations were necessary to ensure the orderly implementation of a new NPA. Although restrictions were imposed, smaller Resp Orgs, like SCG, were able to secure attractive vanity numbers for their customers.

4. REQUESTED ACTION

The Petitioners' request to halt the implementation of the 888 NPA is patently unfair and irrational in the current environment. Over one million 888 numbers have been installed, and customers using these numbers have invested capital and other resources in their use. The suggestion to "reclaim unused or significantly underused 800 numbers from residential users"²⁴ fails to recognize that the number of individuals who utilize work-at-home services is growing daily. The ability to delineate between commercial and residential applications of toll free service is becoming more difficult each day. Likewise, the migration of 888 commercial applications to

²² See Industry Guidelines for 800 Number Administration, Page 3

²³ See Petition, Page 12

²⁴ Id., Page 15

the 800 NPA ignores the investment made in the installation, printing, and advertising costs for the use of new numbers.

Due to the lack of knowledge in the industry, the Petitioners recommended that noncommercial and paging applications be moved to another SAC and recommended the 500 NPA. First, the 500 SAC has already been designated for personal communications services. According to the Personal Communications Services (PCS) N00 NXX Code Assignment Guidelines, “The assignment of a PCS N00 NXX code(s) by the code administrator implies the use of that code(s) by the code recipient/holder for personal communications services.”²⁵ These services have already been tariffed and sold to customers by several carriers. In addition, the 500 SAC is nonportable, forcing customers to do business with a single carrier in order to retain their 500 number. Although the feasibility of number portability is currently being reviewed by the Commission,²⁶ implementation would be time-consuming and useless in resolving the Petitioners’ concerns.

SCG believes that the Commission should continue its course in reviewing the process for implementation of new toll free NPAs. In the current situation, the set aside numbers have now been designated as unavailable, and a larger resource is now available for customers who wish to order toll free services. Although some Resp Orgs are hampered by the allocations still in place, the addition of the 888 NPA has improved the pool of numbers available. SCG continues to recommend that the “unavailable” numbers be released after a designated period of time. However, we also believe that industry efforts to educate the public have been instrumental in the smooth introduction of these numbers.

²⁵ See Personal Communications Services (PCS) N00 NXX Code Assignment Guidelines, ICCF 93-1130-011, Page 4

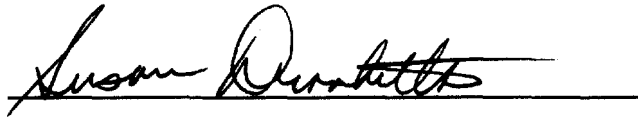
²⁶ See Telephone Number Portability, Notice of Proposed Rulemaking, CC Docket No. 95-116 (Released July 13, 1995)

5. CONCLUSION

SCG strongly opposes the Petition for Reconsideration filed on behalf of Genesis Two, Inc., and Stop 888 Coalition. The immediate halt of 888 assignments would cause irreparable harm to businesses who wish to install vanity numbers from the new pool. The reclamation of commercial 888 numbers would cause financial harm to those businesses that are already actively using their assigned numbers. Migration of residential and paging numbers to another SAC would cause customer confusion and increased claims by customers due to misdirected calls. The Petitioners fail to understand that, regardless of the action taken at this time, the increased use of toll free services will result in the introduction of new SACs now or later. The problems associated with the recommended actions demand that the Commission continue with its present course and deny the Petitioners' request.

Respectfully submitted,

Scherers Communications Group, Inc.

A handwritten signature in black ink, appearing to read "Susan Drombetta", is written over a horizontal line.

Susan Drombetta

Manager - Rates and Tariffs

575 Scherers Court

Worthington OH 43085

(614) 841-2421

Dated: May 3, 1996

Ordering and Billing Forum Issue Identification Form

Attachment 1

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OBF Issue Number 1100	
Date Submitted 2/7/95	
Date Accepted 2/7/95 at OBF #	
Initial Closure	at OBF #
Final Closure	at OBF #
Issue Category	

Part A, Page 1

Issue Title: Interim Exhaust Relief Measures for 800 Numbers

Issue Statement: INC Issue #036 addresses the potential exhaust of the 800 SAC. It is expected that there may be an interim period between resolution of INC Issue #036. "Exhaust of the 800 SAC", and the availability of the expanded resource. During this interim period exhaust relief measures will be needed to assist the industry with reclamation and conservation efforts needed to meet continued customer demand.

Impact of Other Issues or Procedures:

- INC Issue #036, Exhaust fo the 800 SAC
- CLC 800 AD Hoc/OBF 800 Technical Committee
- 800 Number Assignment Rate Reports Issue
- 800 Number Administration Guidelines Changes Issue

Desired Results: The INC should identify a Workshop to examine the relevant portions of the "Industry Guidelines for 800 Number Administration" and to define the necessary interim conservation measures needed to preserve the current 800 number resource for as long as possible and/or until the resolution of INC Issue #036 is available. Resolution of this Issue should include mechanisms for reclamation and conservation of the existing 800 resource and should supercede related sections of the existing guidelines, at a minimum during this interim period.

Committee Assignment: SMS/800 Number Administration Committee

Associated Committee:

Issue Champion: Ken Culpepper
Ron Havens
Jo Gallagher

Company: BellSouth
Sprint - LDD
Bell Atlantic

Ordering and Billing Forum Issue Identification Form

Attachment 2

OBF Issue Number 1101	
Date Submitted 2/7/95	
Date Accepted 2/7/95 at OBF #	
Initial Closure	at OBF #
Final Closure	at OBF #
Issue Category	

Part A, Page 1

Issue Title: 800 Number Assignment Rate Reports

Issue Statement: INC Issue #036 addresses the potential exhaust of the 800 SAC. It is expected that the resolution to the INC Issue #036 will require time to implement and interim exhaust relief measures have been proposed and may be required. The 800 number assignment rate needs to be monitored in order to address process changes on an as needed basis. For example, if the assignment rate suddenly changes the interim exhaust relief measures may need to be changed to adapt to assignment demand shifts.

Impact of Other Issues or Procedures:

- INC Issue #036, Exhaust of the 800 SAC
- CLC 800 AD Hoc/OBF 800 Technical Committee
- Interim Exhaust Relief Measures for 800 Numbers Issue
- 800 Number Administration Guidelines Changes Issue

Desired Results: The INC should identify a Workshop to define the information required to monitor the rate of 800 number assignments during the interim period between the resolution of INC Issue #036 and the availability of an expanded 800 resource and beyond. This information should be used to develop a report that should be provided to the new Workshop at scheduled intervals. Once the report parameters are defined, liaison with DSMI is expected to ascertain the viability of such a report.

Committee Assignment: SMS/800 Number Administration Committee

Associated Committee:

Issue Champion: Ken Culpepper
Ron Havens
Jo Gallagher

Company: BellSouth
Sprint - LDD
Bell Atlantic

Ordering and Billing Forum Issue Identification Form

Attachment 3

OBF Issue Number 1102	
Date Submitted 2/7/95	
Date Accepted 2/7/95 at OBF #	
Initial Closure	at OBF #
Final Closure	at OBF #
Issue Category	

Part A, Page 1

Issue Title: 800 Number Administration Guidelines Changes

Issue Statement: INC Issue #036 addresses the potential exhaust of the 800 SAC. The "Industry Guidelines for 800 Number Administration" need to be analyzed and modified, as appropriate, to insure that the guidelines include on going measures for the reclamation of unused 800 numbers, for the efficient use of the 800 resource and a provision for on going industry review of 800 number assignment rate reports. In addition,, a process for industry notification of a potential exhaust situation should be documented.

Impact of Other Issues or Procedures:

- INC Issue #036, Exhaust of the 800 SAC
- CLC 800 AD Hoc/OBF 800 Technical Committee
- Interim Exhaust Relief Measures for 800 Numbers Issue
- 800 Number Administration Guidelines Changes Issue

Desired Results: The INC should identify a Workshop to modify the relevant portions of the "Industry Guidelines for 800 Number Administration."

Committee Assignment: SMS/800 Number Administration Committee

Associated Committee:

Issue Champion: Ken Culpepper
Ron Havens
Jo Gallagher

Company: BellSouth
Sprint - LDD
Bell Atlantic

Address:

Telephone: (404) 420-8376
(913) 624-6881
(703) 974-8160

Ordering and Billing Forum Issue Identification Form

Attachment 4

OBF Issue Number	1155
Date Submitted	6/2/95
Date Accepted	7/27/95 at OBF 51
Initial Closure	at OBF #
Final Closure	at OBF #
Issue Category	Active

Part A, Page 1

Issue Title: 8XX (Toll Free) SAC Implementation

Issue Statement: To date, 800 is the only toll free SAC available in SMS for Called Party Pay number assignments. When portability re-engineered the 10 digit number assignment process through SMS, most 800 NXX codes were already available for assignment. As 800 exhaust drew closer, new 800 NXX codes were opened on an availability scheduled date, but system impacts were minimal because of the size of the pool of new numbers opening up (1 NXX=10,000 numbers) and customer impacts were minimal because of the uniqueness of the resource assignment (no Y factor impacts).

With the opening of new toll free SAC codes, the resource pool availability is vastly improved to the tune of 7.9 million numbers with each new SAC. Due to the uniqueness of the situation (Y factor and brand protection issues) when coupled with the expected rush to meet customer expectations (get the good numbers), system impacts and customer impacts need to be addressed.

Impact of Other Issues or Procedures: Interim NXX, Y Factor, Early Reservation

Desired Results: The Industry needs to minimize system and customer impacts by establishing a Toll Free SAC Implementation Plan. This plan should address possible customer confusion and allow for the continued provision of world class communication services in the toll free arena.

Ordering and Billing Forum Issue Identification Form

OBF Issue Number	1155
Date Submitted	6/2/95
Date Accepted	6/12/95 at interim
Initial Closure	at OBF #
Final Closure	at OBF #
Issue Category	Active

Part A, Page 2

Issue Title: 8XX (Toll Free) SAC Implementation

Committee Assignment: SMS/800 Number Administration Committee

Associated Committee:

Issue Champion: Toll Free SAC **Company:** Multiple
Implementation Task Force
Chair: Jonnie Bond, AT&T

Address: Room 5B225P **Telephone:** (908) 234-8671
900 Routes 202/206 North
Bedminster

Resolution:

Type of Issue:

MGI _____	User Documentation _____	Other _____
Hardware _____	Bill/800 System _____	SCP Interface _____
Software _____	SMS/800 <u> X </u>	On-Line _____
NASC Procedures _____		

Associated MR #: